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# The New Hampshire Insurance Department Insurance Fraud Unit NEWSLETTER

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SUMMER 1999

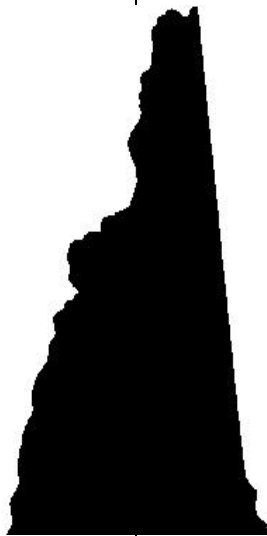
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## Message from the Commissioner

Insurance fraud is a primary source of leakage that is passed on to the consumer in the form of higher premiums. The Insurance Fraud Unit is charged with the responsibility of reducing losses to the industry and ultimately, to the consumer. The Insurance Fraud Unit has developed a credible record of prosecutions, some of which are highlighted in this edition.

The function of this unit takes on an important role in helping to level insurance premiums, as well as to safeguard the solvency of the industry. Insurance fraud, were it a legitimate business, would be in the top 50 of the Fortune 500. Most estimates of the impact due to insurance fraud, amount to 10% of the premium paid by the consumer. Put another way, based on approximately \$2.1 billion in premium, the cost attributable to insurance fraud in New Hampshire is \$21,000,000.

The staff of the unit is available to



make presentations to clubs, businesses and insurers. You are invited to call (603) 271-0230 to arrange for a session on insurance fraud through the unit's outreach program.

Paula T. Rogers, Commissioner

## Concealment and Fraud

Much discussion has taken place concerning a condition in insurance policies entitled 'concealment or fraud' and the rights of innocent co-insureds.

In both California and Washington, this has been the subject of litigation that has resulted in a change in policy language in at least one of those states. When the fraudulent act of an insured results

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in the avoidance of coverage under a policy, the

inequitable happens. Assuming the offending insured acted alone, the remaining innocent insureds are vulnerable to financial ruin.

The problem for the innocent co-insured arises when language voids the policy when any insured is engaged in fraudulent conduct. Such language may be ruled unambiguous in most jurisdictions (see *K&W Builders v Merchants and Business Men's Mut Ins Co*, 495 S.E.2<sup>nd</sup> 473 Va. 1998) and there would be no coverage under the policy. The term 'any' is much broader and therefore more sweeping when used in concealment and fraud conditions in insurance contracts. Conversely, terms as 'the' and 'an' have a narrower connotation, which may limit the application of such avoidance only with respect to the offending insured. In addition, the wording 'the entire policy will be void...' is also broad and could bring the same result as the term 'any'.

Insurance Service Office (ISO) which files rates and forms on behalf of more than 50% of insurers and whose policy language is plagiarized by numerous other insurers, filed revisions to the homeowner policy in their 1991 edition. The concealment and fraud condition began: "The entire policy will be void if.... an insured has.... engaged in fraudulent conduct." This language contrasted dramatically with the 1984 version of the homeowner's policy, which began: "We do not provide coverage for an insured..."

Years later now, the new language has become subject to challenge and it appears that the innocent co-insured is showing signs of prevailing in disputes over the new restrictive verbiage. (See *Rawstron v Safeco [Calif]* and *Bolduc v Safeco [Wash]*). In 1991, ISO was not permitted to make the change in the HO91 filing. In order for them to gain approval of the HO91 filing, they had to restore the

concealment or fraud language that was used in the HO84 version. It was felt that the proposed language penalized one for the acts of another and was contrary to public policy. ISO did agree and by amendatory endorsement, the 1984 wording was restored. This request was in keeping with a 1942 NH Supreme Court Decision that said incendiarism on the part of one of three insureds does not bar recovery by the other two...(Hoyt v Insurance Co 92 NH 242).

Eight years later, I retain that same opinion. While we, as fraud-fighters are dedicated to the reduction of fraud, I believe we must remain sensitive to the rights of the innocent co-insured(s).

Robert L. Stanton, Director  
NH Insurance Department's Fraud Unit

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## **Know when to Hold them, and when to Fold them**

Richard R. Desrochers, former Prudential insurance agent from Manchester, not only gambled with money, but also with his career as an insurance agent.

Prudential auditors made the initial discovery of irregularities in some of Desrochers' accounts and referred the matter to the Insurance Fraud Unit in the NH Insurance Department. As a result of the Fraud Unit's investigation, the Attorney General's Office has alleged that, through various schemes, Desrochers committed acts of theft and forgery. The investigation found that Desrochers arranged for Prudential to send client information to his own address and then proceeded to steal by cashing dividend checks, initiating loans and mishandling

premiums of his clients. The money was taken to pay gambling debts.

He was secretly indicted in March 1998 on 4 counts of theft and 10 counts of forgery. He was arrested 10 days later in Las Vegas.

Desrochers pled guilty later that year to the 14 felonies related to the thefts from clients. The documented amount exceeded \$10,000. Under the terms of the negotiated plea, Desrochers was sentenced to 1.5 to 5 years in prison with a second sentence of 3.5 to 7 years suspended if he stays out of trouble when released. Other conditions of the plea bargain include that Desrochers will:

- Disclose to the New Hampshire Insurance Department and Prudential his knowledge of other policyholders that may have been affected.
- Make restitution for the documented stolen money.
- Surrender his licenses to sell insurance in New Hampshire or any other state and not to re-apply for a license in any state.
- Undergo gambling counseling.
- Repay Prudential Insurance on any additional thefts that are uncovered.

Prudential Insurance has sent refunds to all affected customers.

### Security Guard Gets Jail Time

Linda Roy, a former security guard for the Mount Washington Hotel, was convicted of insurance fraud involving a work-related injury.

Roy had claimed she was injured in her job as a security guard at the Mount Washington Hotel in 1991. A Department of Labor hearing decision was favorable for Roy's workers' compensation claim. During the hearing held in 1993, Roy testified that her injury caused her to suffer lost wages not only from her job at the hotel, but also in her part time job as a private duty nurse. Roy claimed the lost of 5 months of nursing wages along with reduced earnings as a result of her injury.

AIG Claim Services, who adjusted the insurance claim, conducted an investigation which lead to termination of Roys' benefits. The claim was then referred to the New Hampshire Insurance Department's Insurance Fraud Unit. Their investigation determined Roy had committed criminal acts. The case was referred to the Office of Attorney General for prosecution.

Linda Roy was indicted in May 1998 for insurance fraud for allegedly telling Granite State Insurance Company she lost a total of \$12,717 in wages due to an injury, when in fact, she continually worked and received her regular wages from the other job. Roy was also indicted for perjury, alleging that her statements under oath in a Department of Labor Hearing were untrue.

In March 1999, Roy pled guilty to two counts of insurance fraud and one count of perjury in Hillsborough County Superior Court. The judge sentenced her to a term of 1.5 to 5 years in New Hampshire State Prison. That sentence was suspended; however, Roy was also sentenced to serve 30 days in the House of Correction. Roy will also be required to pay restitution and court fees in excess of \$10,000.

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## **Lawsuit Deception Results In Criminal Conviction**

Kevin Landry, a Londonderry resident and business owner, was recently convicted of theft by deception for lying to win an injury lawsuit he pursued years ago.

In March 1991, Kevin Landry received treatment at the local hospital for a mangled hand. Landry told the doctors that he had been cut by a chain saw. He was further treated and admitted at a Massachusetts hospital for the loss of several fingers. Landry sued the chain saw manufacturer and won a settlement of \$95,000 in 1994.

Over a year later, an informant came forward and told police that Kevin Landry actually received a large amount of money (\$250,000) for an injury that was really caused by an explosion. A homemade explosive device went off in his hand. The authorities forwarded this information to the New Hampshire Insurance Department's Fraud Unit upon learning this involved a homeowner's property claim.

The Insurance Fraud Unit developed the case further. It was discovered through the investigation that Landry was clearing timber on a lot owned by another Londonderry resident. However, the investigation discovered that Landry was on the same work site with other high school friends during after-school hours, which was contrary to his lawsuit testimony. The group constructed homemade explosive devices and then drove to Landry's work location. Once there, devices were exploded. On one attempt, Landry failed to toss the

device and it exploded in his hand. One of the other students in the group was also injured and drove himself and Landry to the hospital. The hospital doctors were told by each that they were injured by a chain saw.

Landry later retained an attorney and filed suit against the parent company of the chainsaw manufacturer (White Consolidated Industries). He claimed the saw, he was using earlier in the day, was defective in its design. The lawsuit was settled for \$95,000 with Landry's share being \$42,627.17. Landry claimed he was alone at the time of injury. White Consolidated industries denied its product was defectively designed. The cost of the settlement was ultimately paid by the Equinox Insurance Company, of Burlington, Vermont, who indemnified White Consolidated Industries.

The Insurance Fraud Unit investigation uncovered three eyewitnesses. The Rockingham Grand Jury indicted Landry for Theft by Unauthorized Taking and Receiving Stolen Property in 1997. The case went to trial in June 1999 and after five days of testimony, the jury reached a guilty verdict for Theft by Deception. Landry was recently sentenced for 2.5 to 7 years committed at the House of Correction along with restitution of \$95,000. However, at this time, Landry is free on bail pending an appeal.

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## **FRAUD WARNING STATEMENT: WHAT DOCUMENTS SHOULD CONTAIN IT.**

The department feels clarification is needed on the acceptable way of complying with NH RSA 402:82. Over the past several months, the Fraud Unit has received numerous inquiries and

complaints of how some insurers are deploying these statements on all types of correspondence, besides the claim forms or related claim form documents. Some recipients find the language insulting.

As a guide for future use of the statement, the department’s interpretation for a claim form would include a proof of loss, release, medical payment affidavit or trust agreements.

Documents such as the thirty-day letters, and acknowledgements forwarded to the insured, claimant, or claimant attorney do not have to contain the “fraud warning language”.

This subject will be officially addressed to all licensed insurers in the near future by way of bulletin from New Hampshire Insurance Commissioner Rogers.

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## ANTIFRAUD INITIATIVE REQUIREMENTS

On January 1, 1998 New Hampshire Insurance Department Law RSA 417:30 became effective.

What are the “antifraud initiative” requirements?

Insurers are required to have antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

What options does an insurer have to comply?

Insurers may satisfy the compliance requirement by one of three ways which are described in Section I (1) and (2) of NH RSA 417:30. The NH Insurance Department needs to be advised in writing \_\_\_\_\_ of the selected option. The three options are:

1. Insurer employs fraud investigators.
2. Insurer employs an independent contractor for fraud investigation.
3. Insurer submits an antifraud plan to the commissioner.

### REMINDER:

Each insurer will receive verification of their response. A copy of NH RSA 417:30 can be obtained in the National Insurance Law Service text, write the New Hampshire Insurance Department, or visit our web site at [www.state.nh.us/insurance](http://www.state.nh.us/insurance) then to directory of state departments.

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## Mailing List

Parties interested in receiving this publication may FAX the New Hampshire Insurance Department at **(603) 271-7029 or write.**

Please include name, title, organization and address to the attention of the Insurance Fraud Unit, Department of Insurance, 56 Old Suncook Road, Concord, NH 03301.

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### **Fraud Against NH Seniors**

The New Hampshire Insurance Department has two printed handouts on various ways fraud could be perpetrated against senior citizens. The handout identifies scenarios of misrepresentation and fraud along with some tips on how to protect yourself.

Anyone interested can call (603) 271-0230 or write for copies.